



GOVERNOR'S OFFICE OF STORM RECOVERY

Andrew M. Cuomo
Governor

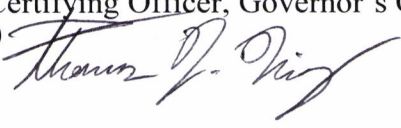
Seth Diamond
Director

James Rubin
Director



MEMORANDUM

To: CDBG-DR NY Rising Bulkhead Repair Initiative - ERR File

From: Thomas J. King, Certifying Officer, Governor's Office of Storm Recovery (GOSR) 

Date: July 17, 2014

Subject: Re-evaluation of Environmental Assessment under 24 CFR 58.47-
NY Rising Bulkhead Repair Initiative

The activities associated with the NY Rising Bulkhead Repair Initiative ("the Initiative") would provide financial assistance (for repair and/or replacement or reconstruction) to property owners whose residential bulkheads were damaged by Hurricane Irene and Superstorm Sandy. The Initiative is a component of the NY Rising Single Family Housing (SFH) and Multifamily Programs, which are funded by the New York State Homes and Community Renewal's (HCR) CDBG-DR program. This initiative is needed to help maintain or restore properties impacted by these storms through repair and replacement of damaged bulkhead structures, and to help prevent future damage.

A Tier 1 Programmatic Environmental Assessment (PEA) was conducted for the Nassau County Bulkhead Repair Initiative in accordance with U.S. Department of Housing and Urban Development (HUD) regulations 24 CFR Part 58, and a combined *Finding of No Significant Impact* (FONSI) and *Notice of Intent to Request Release of Funds* (NOIRROF) was published on April 4, 2014.

Subsequent to issuance of the FONSI/NOIRROF, the Tier 1 PEA was revised to reflect changes in the scope and administration of the Initiative, and to respond to comments received from HUD and the U.S. Environmental Protection Agency (EPA). Substantive revisions include the following:

- Program Eligibility Language: Minor revisions were made to the language regarding program eligibility requirements for the NY Rising Housing Recovery Programs.
- GOSR clarified that the homeowners participating in the initiative would be eligible to receive a preliminary payment of \$2,500.00 to cover engineering and design costs which are necessary to inform the Tier II environmental review. The preliminary payment would not be used for construction activities, but only for engineering and design costs associated with bulkhead repair or reconstruction. Such costs are exempt from environmental review pursuant to 24 CFR 58.34 and as such will be issued to eligible homeowners prior to the execution of the Tier II environmental review.

- **Permitting Requirements:** Information related to permitting requirements for bulkhead repair activities was updated and clarified in the Tier 1 PEA. The Tier 1 PEA was revised to incorporate expiration dates, Notice for Intent deadlines, and clarification of eligibility for NYSDEC General Permits GP-0-12-006, GP-0-13-006, and GP-1-13-001, and the United States Army Corps of Engineers (USACE) regional general permit NYDGP-15.

Additionally, The PEA was revised to discuss the following NYSDEC individual permits as potentially required documentation for applicants: Tidal or Freshwater Wetlands Permit, Protection of Waters Permit, and Coastal Erosion Management Permit.

- **Coastal Consistency Assessment and Local Waterfront Revitalization Plan:** The Tier 1 PEA for the Initiative stated that the NY Rising Bulkhead Repair Initiative would be consistent with the policies and purposes of the NYS Coastal Management Program (NYSCMP), with reference to a consultation letter from NYSDOS dated October 18, 2013. However, this consultation did not evaluate the Bulkhead Repair Initiative component of the NY Rising Housing Recovery Programs. A subsequent consultation with NYSDOS, dated May 23, 2014, determined that the Initiative would likewise be generally consistent with the policies and purposes of the NYSCMP.

The Tier 1 PEA was also revised to reflect that, in cases where activities are located within the jurisdiction of an approved Local Waterfront Revitalization Plans (LWRP), a Tier 2 site-specific assessment would be conducted in accordance with 19 NYCRR Part 600 to determine whether the project would be likely to affect the achievement of the policies and purposes of the approved LWRP.

- **Air Quality:** The Tier 1 PEA was updated to provide an analysis to demonstrate the emissions under the Initiative would be de minimis and would not require a conformity analysis pursuant to the requirements of 40 CFR 93, Subpart B (federal general conformity regulations). This analysis is provided in Appendix L of the PEA.
- **Asbestos and Lead-Based Paint:** The Tier 1 PEA for the Initiative stated that applicants seeking reimbursement must document compliance with lead-based paint and asbestos regulations, or must conduct a comprehensive asbestos survey and/or lead-based paint inspection, as appropriate. However, bulkheads are not likely to contain asbestos or lead-based paint. The PEA was revised to eliminate the requirement for asbestos and lead-based paint surveys with the requirement that if these materials are identified via visual inspection, activities would comply with the applicable federal, state, and local laws and regulations. This approach, which would be protective of residents and the environment, would apply both to applicants who are seeking to conduct work and to those seeking reimbursement following the completion of work.
- **Alternatives and Cumulative Impacts:** The Tier 1 PEA was updated to include an expanded discussion of the potential direct, indirect, and cumulative impacts of the Initiative and alternatives.
- **Agency Consultation Summary:** At the request of HUD, the revised PEA has been updated to include a table summarizing the agency consultation information, including the agency consulted, type of consultation, date of consultation, date of agency response, and details regarding the outcome or determination of the consultation.

- Inclusion of EPA Comments: The Tier 1 PEA for the Initiative was revised to incorporate comments submitted by EPA and responses to those comments in a new appendix.

In response to the scope and administrative changes to the Initiative and comments from HUD and EPA, and pursuant to 24 CFR 58.47 "Re-evaluation of environmental assessments and other environmental findings," the CDBG-DR team revised the original Nassau County Bulkhead Repair Initiative PEA and conducted a re-evaluation of the associated finding. The original finding remained valid, and accordingly, a new FONSI and RROF is not necessary.¹ The CDBG-DR team submitted the revised PEA to HUD on June 30, 2014 and received HUD's approval on July 3, 2014. The CDBG-DR team resubmitted a Request for Release of Funds (RROF) to HUD on July 17, 2014. An Authority To Use Grant Funds (ATUGF) is expected to be forthcoming.

¹ 24 CFR § 58.47(b)(1) "If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this reevaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required."